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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Beau John Greene,
Petitioner,

vs.

Dora Schriro, et al.,
Respondents.

No. CV 03-605-TUC-FRZ

DEATH PENALTY CASE

ORDER

Before the Court is Petitioner's motion to file his amended petition for writ of habeas corpus under seal. Petitioner's motion requests that his amended petition be sealed because it contains citations to a transcript of a deposition that was ordered sealed during state post-conviction proceedings. Respondents oppose the motion and urge the Court to direct Petitioner to file a revised petition that omits reference to any factual details from the sealed deposition. In a sealed order filed April 22, 2005, the Court directed Petitioner to seek leave of the Pima County Superior Court to unseal the deposition and maintained the instant motion under advisement pending a ruling by the state court. On July 11, 2005, the state court denied Petitioner's motion to unseal, and a motion to reconsider was denied on September 16, 2005.

As authority for sealing his amended petition, Petitioner cites Rule 26(c)(6) of the Federal Rules of Civil Procedure, which provides that a district court may seal a deposition. However, Rule 26(c)(6) is inapplicable; Petitioner seeks to seal a habeas petition, not

1 undertake discovery for which a protective order under Rule 26 may be appropriate.
2 Nonetheless, after due consideration of the privacy interests of the victim's family, the
3 public's right of access to the pleadings in this matter, and in light of the state court's
4 unwillingness to unseal the deposition, the Court concludes that all interests are best served
5 by sealing the amended petition but directing that a redacted version be filed in the public
6 record.

7 As noted by the Court in its April 22 order, the information Petitioner seeks to
8 maintain in a confidential manner is already a matter of public record. In his Amended
9 Petition for Post-Conviction Relief filed on December 17, 2001, in Pima County Superior
10 Court, Petitioner identified the person with whom the victim's wife was having an affair,
11 revealed that this person was a family friend, and stated that the affair had been ongoing prior
12 to the victim's death. (Dkt. 36, Ex. B at 38-40.)¹ That pleading was not filed under seal and
13 is available to the public through the Clerk of the Pima County Superior Court. It appears,
14 then, that the only difference between the pleadings filed in state court and those in this Court
15 is the use of direct quotations from the sealed deposition. Because the deposition is sealed,
16 the Court will direct that Petitioner submit a redacted version of the amended petition that
17 blocks out all direct quotes from the deposition.²

18 Based on the foregoing,

19 **IT IS HEREBY ORDERED** that Petitioner's Motion to File First Amended Petition
20 for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 Under Seal is **GRANTED**. (Dkt.
21 33.) The Clerk of Court is directed to file Petitioner's First Amended Petition for Writ of
22 Habeas Corpus Pursuant to 28 U.S.C. § 2254 **under seal** *nunc pro tunc* as of December 21,
23 2004.

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26 ¹ "Dkt." refers to documents in this Court's file.

27 ² Respondents also lodged their answer to the amended petition under seal. The
28 Court has reviewed the answer and discerned no direct quotations from the sealed deposition.
Accordingly, the Court will direct the Clerk to file the answer in the public record.

